IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 464 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAVJIBHAI JETHABHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR HM PARIKH for Petitioner

MR KG SETH for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 27/04/2001

ORAL JUDGEMENT

#. The petitioner above named has preferred this Revision Application against the order dated 16.10.2000 recorded by the learned Additional Sessions Judge, Kheda at Nadiad in Criminal Appeal No.38 of 2000 directing the present petitioner who was original accused in Criminal

Case No.1259/1998 before the learned Judicial Magistrate First Class, Petlad, Kheda to furnish surety and P.R. in a sum of Rs.5,000/-. The learned Additional Sessions Judge further directed the petitioner to deposit the remaining amount of Rs.95,000/- within 90 days.

#. Feeling aggrieved by the second part of the said order referred hereinabove the petitioner preferred this application before this Court.

#. It is contended that the order of the learned Additional Sessions Judge is illegal and perverse and deserves to be quashed and set aside.

#. Rule was issued and Mr.K.G.Seth, learned APP appears in response to the service of rule. I have heard both the sides. I have perused papers.

#. It appears from the record that the present petitioner was tried before the learned Judicial Magistrate First Class, Petlad in Criminal Case No.1259/1998 for the offence punishable under Section 138 of the Negotiable Instruments Act, and was convicted.

#. The petitioner preferred Criminal Appeal No.38/2000. At the admission stage an application was made by the petitioner for suspending the aforesaid order of the trial court for sentencing him to jail and imposing upon him the aforesaid amount of fine.

#. The learned Additional Sessions Judge, directed the petitioner to furnish surety and P.R. in sum of Rs.5,000/-. However, the learned Additional Sessions Judge, further directed that the petitioner shall immediately deposit an amount of Rs.5,000/- being the amount of fine imposed by the trial court.

#. The learned Additional Sessions Judge further directed the petitioner to deposit remaining amount of Rs.95,000/- within 30 days. It seems that these are the 3 conditions imposed by the learned Additional Sessions Judge for suspending the sentence awarded by the learned Magistrate and for continuing the petitioner on bail pending, hearing and disposal of the aforesaid Criminal Appeal.

#. Now it is very clear that the provisions have been made in the Criminal Procedure Code 1973 for powers, functions and jurisdiction of Judicial Magistrate First Class in the State. It would be relevant to consider Section 29 of the Code, Sub-Section (2) of Section 29

states that the Court of the learned Magistrate may pass a sentence of imprisonment for a term not exceeding 3 years, or of fine not exceeding 5,000/rupees, or of both. On a bare perusal of Sub-Section (2) of Section 29 of the Code it becomes amply clear that the Judicial Magistrate First Class cannot impose a fine of more than Rs.5,000/-, in other words, the aforesaid amount is the ceiling limit fixed by the Code. In other words, the Learned Judicial Magistrate, First Class could not have imposed a fine of Rs.1 lac in a case tried by him in which he convicted the present petitioner and imposed fine of Rs.1 lac.

##. In that view of the matter, the order of the Learned Magistrate imposing fine of Rs.1 lac is exfacie, illegal and without jurisdiction.

##. In that view of the matter, the learned Additional Sessions Judge was not required to direct the petitioner to deposit the amount of Rs.95,000/- within 30 days from the date of the order. Therefore, when the order of the Learned Magistrate is primafacie illegal, the order of the learned Additional Sessions Judge directing the petitioner to deposit the remaining amount of Rs.95,000/would equally be illegal. In that view of the matter, the petitioner succeeds and the above portion of the order of the learned Additional Sessions Judge will be required to be quashed and set aside by allowing Revision Application.

##. On this point, I have also heard the learned APP Mr.K.G.Seth who is unable to show any provision under which the Judicial Magistrate of the First Class can impose a fine of Rs.1 lac. He could not support the above part of the order of the Learned Additional Sessions Judge.

##. In above view of the matter, this Revision Application is allowed. The order passed by the learned Additional Sessions Judge on 16.10.2000 in Criminal Appeal No.38 of 2000 directing the petitioner to deposit an amount of Rs.95,000/- within 30 days is quashed and set aside. The order of imprisonment and fine recorded by the learned Judicial Magistrate, Petlad in Criminal Case No.1259/1998 shall stand suspended, if the other conditions imposed by the learned Additional Sessions Judge are complied with. Rule is made absolute to the above extent. D.S. is permitted.

(D. P. BUCH, J.)

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